

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2015

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

C.M.A.No.2203 of 2015
M.P.No.1 of 2015

M/s.Reliance General Insurance Co. Ltd.,
Chennai. .. Appellant/2nd Respondent

vs

1. K.Anbazhagan ..Respondent/Petitioner
2. Srinivasalu Reddy ..Respondents/1st Respondent

Appeal against the fair and decretal order dated 23.04.2014 passed in M.C.O.P.No.4492 of 2010, on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai.

For Appellant .. Mr.N.Vijayaraghavan

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J.)

The only challenge in this appeal filed by M/s.Reliance General Insurance Co. Ltd., is to the quantum of compensation of Rs.17,57,000/-, with interest at the rate of 7.5% per annum, from the date of claim, till the date of deposit, awarded to the respondent/claimant. Hence, there is no need to delve into the aspects of negligence and liability.

2. In the accident, which occurred on 21.01.2010, the respondent/claimant, aged about 24 years and claimed to be a plumber, by avocation, sustained D11 fracture paraplegia, dislocation of femur and multiple injuries, all over the body. To prove that he has sustained grievous injuries and took treatment in various hospitals and thus, become an orthopaedically handicapped and paraplegic, he has marked Ex.P2 - Discharge Summary, issued by the Government General Hospital,

Chennai, Exs.P3 & P5 - Discharge Summaries issued by Government Institute of Rehabilitation Centre, K.K.Nagar, Chennai, Ex.P6 - Rail Concession Certificate, Ex.P7 - Medical Reports, Ex.P8 - Medical Bills, Exs.P9 & P12 - X-Rays and Ex.P11 - Disability Certificate.

3. Upon perusal of the above documents, the Claims Tribunal has recorded that Ex.P2 - Discharge Summary issued by the Government General Hospital, Chennai, showed that the respondent/claimant sustained fracture of D11 with paraplegia and treated as inpatient from 21.01.2010 to 24.02.2010. He had underwent a surgery on 09.02.2010 and thereby, Global Stabilisation has been done. Ex.P3 - Discharge Summary issued by the Government Institute of Rehabilitation Centre, K.K.Nagar, has indicated that thereafter, he was inpatient from 25.02.2010 to 21.07.2010 and during the said period, BK & AE Slap has been applied. He has continued treatment as outpatient for five days. He was also treated as inpatient at Sri Ramachandra Hospital, between 10.12.2011 and 31.01.2012. In Ex.P5 - Disability Certificate issued by the Government Institute of Rehabilitation Centre, K.K.Nagar, the extent of disability of the respondent/claimant has been assessed at 75%, as a case of Traumatic Paraparesis. Ex.P6 is the Concession Certificate, for the purpose of Rail Concession to Orthopaedically handicapped/paraplegic. Ex.P17 (series) are the medical bills to the tune of Rs.17,443/-.

4. PW.2, Doctor, who examined the respondent/claimant, with reference to the medical records, has opined that there would be 80% partial permanent disablement. Added further, he has deposed that due to fracture of D11 Vertebra and dislocation of femur, there was no sensation in left side body of the respondent/claimant. According to him, during examination, there was less movement. The respondent/claimant was using napkin. He has opined that even with the help of Walker and assistance of others, the respondent/claimant found it difficult to walk and that he was limping.

5. According to PW.2, Doctor, the respondent/claimant would find it difficult to climb staircase, squat and cannot travel alone, either in bus or train. He cannot do any work, without the help of others. He cannot bend. The thigh bone was malunited. The respondent/claimant was unmarried at the time of accident and like others, he cannot lead a normal life. Thus, after a detailed physical examination, he has assessed the

extent of disablement at 80% and issued Ex.P11 - Disability Certificate.

6. Though before the Claims Tribunal, the respondent/claimant claimed that he was a plumber and earned Rs.10,000/- per month, placing reliance on a decision of this Court in *The Branch Manager, Royal Sundaram Alliance Insurance Co. Ltd., v. Minor Mareeswaran, rep., by Guardian, Karuthupandian* reported in 2013 (2) TNMAC 556, the Claims Tribunal fixed the monthly income of the injured as Rs.7,500/-. In the above reported case, the deceased was a Mason, by profession. However, the Claims Tribunal has applied the said judgment to the case on hand and fixed the income of the respondent/claimant as Rs.7,500/-. Perusal of the judgment, impugned in the appeal, before us, shows that avocation of the respondent/claimant, as plumber, was not controverted by the appellant-Insurance Company.

7. Though the respondent/claimant has contended that he suffered 80% disability and therefore, the loss of earning capacity should be estimated on that basis, taking note of the decisions of the Apex Court in *Nizam Institute of Medical Sciences v. Prasanth S.Dhananka* reported in 2009 (6) SCC 1, *Aravind Kumar Mishra v. New India Insurance Co. Ltd.*, reported in 2010 (10) SCC 254 and *Kavitha v. Deepak and others* reported in AIR 2012 SC 2893 and the medical records, in particular, Ex.P5 - Disability Certificate issued by the Government Institute of Rehabilitation Centre, assessing the disability for the respondent/claimant at 75%, decided to compute the loss of earning capacity. Discussion of the Tribunal, with reference to the abovesaid decisions, is reproduced hereunder:

"In 2010 (10) SCC 254, *Aravind Kumar Mishra v. New India Insurance Co. Ltd., and another*, Our Hon'ble Apex Court held that, "The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living."

In the landmark judgment our Hon'ble Apex Court in the case law reported in AIR 2012 SC 2893, *Kavitha v. Deepak and others*, held "in determining the quantum

of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses."

Our Hon'ble Apex Court in yet another case of historic importance with humanitarian touch has held in the case law reported in (2009) 6 SCC 1, Nizam Institute of Medical Sciences v. Prasanth S.Dhananka, "The case of an injured and disabled person is, however, more pitiable and the feeling of hurt, helplessness, despair and often destitution enures every day. The support that is needed by a severely handicapped person comes at an enormous price, physical, financial and emotional, not only on the victim but even more so on his family and attendants and the stress saps their energy and destroys their equanimity. We can also visualize the anxiety of the complainant and his parents for the future after the latter, as must all of us, inevitably fade away. We, have, therefore computed the compensation keeping in mind that his brilliant career has been cut short and there is, as of now, no possibility of improvement in his condition, the compensation will ensure a steady and reasonable income to him for a time when he is unable to earn for himself." Now the position of law is well settled from the landmark judgments of our Hon'ble Apex Court and our Hon'ble High Court that in cases of permanent disability as a result of injuries the assessment of compensation under the head of loss of future income would depend upon the effect and impact of the permanent disability to the earning power and earning capacity of the injured person. In the present case on hand, the petitioner is a Carpenter at the time of accident. As a result of head injury and fracture of zygomatic Arch he is prevented from carrying on the previous activities. This Tribunal is of the considered opinion that the petitioner's ability to perform the job would

certainly got affected on account of the disability."

8. The Claims Tribunal has taken note of a decision of this Court in Branch Manager, National Insurance Co. Ltd., v. P.Selvam reported in 2013 (1) TNMAC 308, wherein, this Court held that, "If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities which he would have enjoyed but for the disability caused due to the accident." The Tribunal has also considered the decisions of the Apex Court in Sunil Kumar v. Ramsingh Goud and others reported in 2008 ACJ 9, Santsingh v. Sukdevsingh and others reported in 2011 (2) TNMAC 679 (SC), Santhosh Devi v. National Insurance Co. Ltd., reported in 2012 (6) SCC 421, Reshmakumari and others v. Madhanmhan and another reported in 2013 (2) CTC 680 and Syed Sadiq etc., v. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 STPL (WEB) 31 (SC), and added up 50% towards future prospects. Thereafter, after considering a decision of the Apex Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC 1 (SC), the Tribunal has computed the loss of future earning as Rs.12,50,000/- (Rs.7,500/- x 12 x 18 x 75%).

9. Upon perusal of the medical records, particularly, Ex.P2 - Discharge Summary, issued by the Government General Hospital, Chennai, Exs.P3 & P5 - Discharge Summaries issued by Government Institute of Rehabilitation Centre, K.K.Nagar, the Claims Tribunal has observed that the respondent/claimant would not have attended his work, atleast for a period of four months and awarded compensation of Rs.30,000/- towards loss of income, during the period of treatment.

10. Considering the fracture of D11 Vertebra and the extent of disablement at 75%, the Claims Tribunal came to the conclusion that the respondent/claimant has lost his marital prospects and amenities and taking note of the decisions of the Hon'ble Apex Court in Aravind Kumar Mishra v. New India Insurance Co. Ltd., reported in 2010 (10) SCC 254, Ibrahim v. Raju reported in 2011 (2) TNMAC 641 (SC) and Kavitha v. Deepak and others reported in AIR 2012 SC 2893, has awarded Rs.1,00,000/- towards loss of marriage prospects and Rs.1,00,000/- for loss of amenities.

11. Going through the medical records, the Claims Tribunal has found that the respondent/claimant had underwent several

surgeries and become orthopaedically handicapped. Applying the decision of this Court in New India Assurance Company Ltd., v. E.Ponnurangam reported in 2013 (1) TNMAC 47, the Claims Tribunal has awarded Rs.1,00,000/- towards pain and suffering.

12. Having regard to the pitiable condition of the respondent/claimant, being orthopaedically handicapped/paraplegic that he was unable to attend the natural calls, without the help of others and limping without walkers and taking note of the decision of the Apex Court in Ibrahim v. Raju reported in 2011 (2) TNMAC 641 (SC), the Claims Tribunal has awarded Rs.1,00,000/- towards future medical expenses.

13. That apart, the Claims Tribunal, upon perusal of Ex.P10 - Nutrition Bills and Ex.P17 - Medical Bills, awarded Rs.34,545/- and Rs.17,443/- towards Extra Nourishment and Medical Bills. Besides, the Claims Tribunal has awarded Rs.10,000/- towards transportation and Rs.50,000/- towards attendant charges. Altogether, the Claims Tribunal has awarded Rs.17,56,988/- with interest, at the rate of 7.5% per annum.

14. Though Mr.N.Vijayaraghavan, learned counsel for the appellant-Insurance Company vehemently contended that the Claims Tribunal has grossly erred in awarding an exorbitant compensation of Rs.17,56,988/-, without assessing the nature of injuries and the extent of disablement and exaggeratedly spoken to, by PW.2, Doctor and further contended that the Claims Tribunal has grossly erred in awarding huge compensation under different heads, which is unjust and unreasonable, and nothing but a windfall to the respondent/claimant and for the abovesaid reasons, sought for reduction of compensation and also contended that the Claims Tribunal had given a undue weightage to the testimony of PW.2, Doctor, this Court is not inclined to accept the said contentions, for the reasons that after going through the oral and documentary evidence, the Claims Tribunal has meticulously and with due care and caution, assessed the evidence, both oral and documentary and applied the judgments of this Court and Hon'ble Apex Court to the facts of the case and taken into consideration all the relevant factors, that are to be taken into consideration by the Tribunals/Courts and in particular, by giving due credence and weightage to Ex.P5 - Disability Certificate issued by the Government Institute of Rehabilitation Centre, K.K.Nagar, while assessing the disability of the respondent/claimant at 75%, as a case of Traumatic Paraparesis and then proceeded to compute the loss of earning capacity.

15. Perusal of the award shows that though the respondent/claimant had suffered a higher percentage of disability and thus, lost his future earning capacity, the Claims Tribunal has not awarded separate compensation under the head, disablement, duly assessed by the Government Institute of Rehabilitation Centre, K.K.Nagar, Chennai. The Apex Court in a decision made in *B.Kothandapani v. Tamil Nadu Transport Corporation Ltd.*, reported in 2011 (5) SCC 420, held that an injured is entitled to claim compensation under both heads, disability and loss of earning capacity.

16. Though PW.2, Doctor, who examined the respondent/claimant, with reference to the medical records has assessed the disablement at 80%, the Claims Tribunal has independently considered the medical records, viz., Ex.P2 - Discharge Summary, issued by the Government General Hospital, Chennai and Exs.P3 & P5 - Discharge Summaries issued by Government Institute of Rehabilitation Centre, K.K.Nagar, Chennai and thus, determined only 75% partial permanent disablement, for assessing the loss of future earning capacity.

17. The Tribunal, after perusal of Ex.P7 - Medical Reports, Ex.P8 - Medical Bills and Exs.P9 & P12 - X-Rays, has also recorded that the respondent/claimant has become orthopaedically handicapped/paraplegic and was walking with the help of walker and limbing, and unable to attend nature calls, without the help of others. At the time of accident, the respondent/claimant was aged 24 years. He has lost his future earning capacity and become paraplegic, lost his marriage prospects and amenities, etc.

18. Quantum of compensation awarded under various heads, challenged in this appeal, cannot be said to be grossly excessive or windfall to a 24 year young man, who has to live with the abovesaid disablement for rest of his life time. There are no merits in this appeal, warranting interference.

19. In the result, the Civil Miscellaneous Appeal is dismissed. The appellant-Insurance Company is directed to deposit the award amount, with accrued interest and costs, to the credit of M.C.O.P.No.4492 of 2010, on the file of the Motor Accidents Claims Tribunal (V Court of Small Causes), Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent/claimant is permitted to withdraw the same, by making

necessary applications before the Tribunal. No costs.
Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

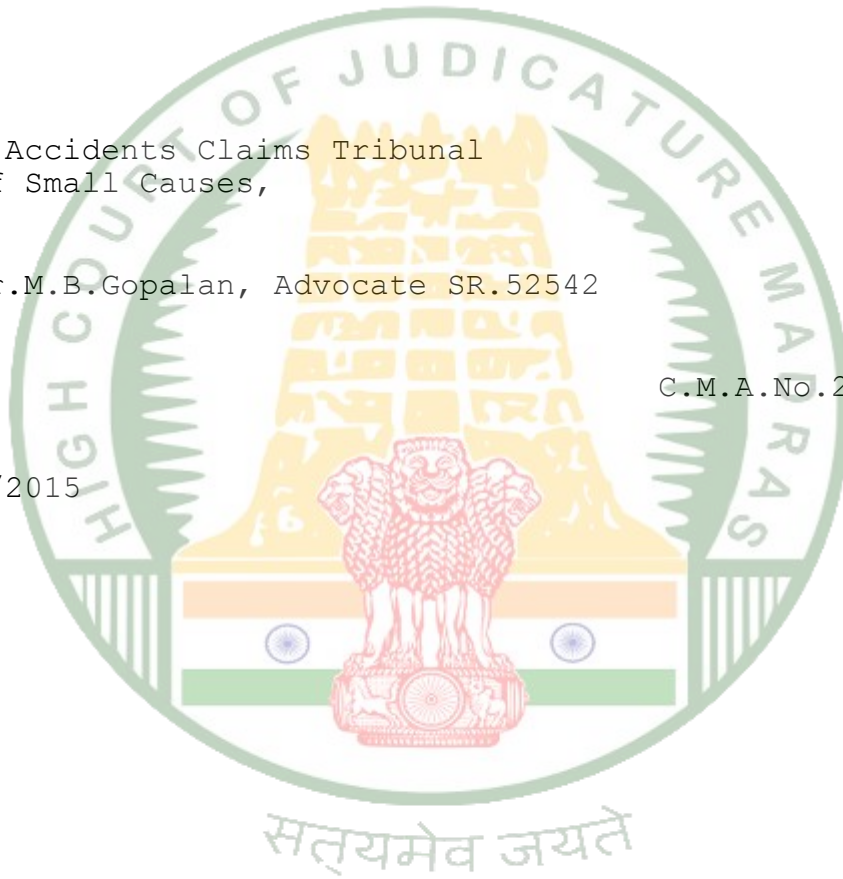
To

The Motor Accidents Claims Tribunal
V Court of Small Causes,
Chennai.

+1cc to Mr.M.B.Gopalan, Advocate SR.52542

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